

# FREE SPEECH

PSCI 3774  
Spring19

Instructor: Colin Kielty  
Room: MUEN E43 I  
Time: MWF 9–9:50am

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Office Hours: M + W, 2:30–4pm

## Course Description

“Free Speech” is at once a philosophical idea, a legal tradition, a polemical slogan, and a historical struggle. In this course we explore the multiple dimensions of “free speech” as a moral, political and even economic category. What kinds of activity, political or otherwise, count as “speech”? How are these activities made more or less “free”? And why is preserving that freedom important? What historical struggles and causes has the idea of free speech developed in and through? What institutions and technologies shape it, and should it shape?

To unpack and pursue these questions, we will engage a range of philosophical and academic texts, court cases, popular essays and other digital documents across four units. In the first, we read and interrogate major statements and justifications of free speech in broad philosophical terms. In the second, we explore major U.S. legal decisions that have shaped the meaning of free speech within the tradition of the First Amendment. In the third, we expand our analytical frame to examine a range of non-vocal political acts that nevertheless travel under the banner of “speech.” And in the fourth we think through how the proliferation of digital technologies and platforms has transformed both the practice of political speech and the conceptual categories necessary for understanding it.

## Course Learning Objectives

Our public discourse overflows with invocations of “free speech.” Our goal is to become more critically, historically and morally sensitive interpreters and users of this language. To this end, we will aim to better...

- Appreciate of the range and specificity of different arguments for “free speech,” as well as their limitations
- Understand how the idea of free speech operates in different ways across different domains (from the law to interpersonal conversation, the physical public square to the digital public sphere)
- Diagnose where the language of free speech is used in incomplete, inaccurate or deceptive ways
- Persuasively articulate how the values associated with free speech should apply to concrete contexts
- Thoughtfully engage in discussions and debates about both the “meaning” of free speech and its concrete application

## Texts

You will need to purchase two books in hard copy for this course.

- John Stuart Mill, *On Liberty* (Hackett)
- Tarleton Gillespie, *Custodians of the Internet* (Yale)

The rest of the readings are freely available in digital editions, linked here (on the Syllabus) or posted on Canvas. Books devoted to free speech issues that we read selections from include:

- Jeremy Waldron, *The Harm in Hate Speech* (Harvard) [\[link\]](#)
- Richard Hasen, *Plutocrats United* (Yale) [course reserve]

## Course Work: Activities, Assignments and Assessments

### Grading Breakdown

Quizzes (10) – 10%	Reading Questions (6) – 6%	Fishbowl Questions (2) – 4%
	Short Reading Responses (4) – 16%	Fishbowl Reflections (4) – 24%
	Long Reading Reflections (4) – 40%	

Quizzes: Ten (10) times across the semester you will be responsible for some manner of “quiz.” Quizzes will always assess engagement with the readings, but will do so in different ways. Some quizzes will briefly assess whether you have done the readings at the start of randomly selected class sessions. (In this way they can also serve as proxies for attendance.)\* Some quizzes will be tied to small group discussions or activities, and will necessitate collective answers. Each quiz will be graded “P” (pass, 1pt/%) and “NP” (no pass, 0pts/%).

\*If you miss a quiz class in a way excused by the attendance policy, your next quiz will simply count double.

Reading Questions: Six (6) times across the semester you will compose and submit a concise and thoughtful question provoked by the readings and suitable to address in class. You will sign up for dates of your own choosing through a process explained in class and submit to Canvas by 5pm the day before class. Questions will be graded “S” (satisfactory, 1pt/%) and “U” (unsatisfactory, 0pts/%) based upon whether they demonstrate in-depth engagement with and critical thought about the readings.

Short Reading Responses: Four (4) times across the semester you will write a short, 250–300 word response paper addressing the class readings. Short Reading Responses offer an opportunity for you to articulate your own insight about our texts and the broader issues they address. Short Reading Responses will be due *by class*, and will be graded on a 4pt scale (each worth 4% of your grade) with expectations detailed in the [Rubric on Canvas](#).

Long Reading Reflections: Four (4) times across the semester you will submit a longer, 600–700 word composition that not only identifies a perspective on the readings but develops that perspective, articulating a *persuasive argument*. Long Reading Reflections are the most significant part of your grade, and each will be evaluated on a standard letter-grade basis. See the [Rubric on Canvas](#) for more detailed expectations.

As with Short Reading Responses, you will sign up for dates of your own choosing. Unlike Short Reading Responses, Long Reading Reflections are due *three days after their respective class session, by 5pm*. This allows you to take time with your composition after exploring the material in class. \*NOTE\*: All students will compose their fourth (4th) Long Reading Reflection for the last class session. In this sense it is like a final paper.

Fishbowl Questions: For class sessions in which you will participate in a “fishbowl” seminar (2 times) you will also submit a pre-class question. Like regular Reading Questions, Fishbowl Questions will be due *by 5pm the*

day before class. Fishbowl Questions, however, will be in greater depth and available for the rest of the participants to view before class, as well as graded “E” (excellent, 2pts/%), “S” (satisfactory, 1pt/%) and “U” (unsatisfactory, 0pts/%).

**Fishbowl Reflections:** Each class session that you are “out” of a fishbowl seminar discussion you will compose a 450–500 word reflection paper that articulates and develops the insights/analyses that (a) concretely engage the content of the seminar discussion, and (b) go beyond that discussion to cover new ground and/or offer a perspective unique to the author. Fishbowl reflections will be evaluated on a 6pt scale detailed on the [Rubric on Canvas](#). They are due *three days after their respective class session, by 5pm.*

## Readings and Schedule

### Unit I - Philosophical Foundations

#### WEEK 1

Mon Jan 14: Intro/Syllabus

Wed Jan 16: Stanley Fish, “There’s No Such Thing as Free Speech, and It’s a Good Thing Too” [14p]

Fri Jan 18: John Milton, *Areopagitica* [first half, 26p]

#### WEEK 2

Mon Jan 21: Martin Luther King Jr. Holiday (No Classes; University Closed)

Wed Jan 23: John Milton, *Areopagitica* [second half, 19p]

- *Small groups 1*

Fri Jan 25: John Stuart Mill, *On Liberty*, Ch. 1 [15p]

#### WEEK 3

Mon Jan 28: John Stuart Mill, *On Liberty*, Ch. 2 [37p]

Wed Jan 30: John Stuart Mill, *On Liberty*, Ch. 3 [20p]

Fri Feb 1: John Stuart Mill, *On Liberty*, Ch. 4 [20p]

- *Fishbowl 1*

#### WEEK 4

Mon Feb 4: John Stuart Mill, *On Liberty*, Ch. 5 [21p]

Wed Feb 6: Alexander Meiklejohn, *Free Speech and Its Relation to Self-Government*, Ch. I and “Reflections” [38p]

Fri Feb 8: Alexander Meiklejohn, *Political Freedom*, Introduction and “B. Testimony on the Meaning of the First Amendment” [p26]

- *Small Groups 2*

## Unit 2 - Legal Frameworks

### WEEK 5

Mon Feb 11: Schenck v. United States (1919) [[Oyez](#) | [Case](#)] + Abrams v. United States (1919) - make sure to read Holmes Dissent [[Oyez](#) | [Case](#)] + Stone Note on Abrams + Bernard Williams, "The Marketplace of Ideas" [excerpt from *Truth & Truthfulness*, 6p]

Wed Feb 13: Whitney v. California (1927) [[Oyez](#) | [Case](#)] + Gitlow v. New York (1925) [[Oyez](#) | [Case](#)] + Dennis v. United States (1951) [[Oyez](#) | [Case](#)] + Stone Notes on Whitney, Gitlow

Fri Feb 15: Brandenburg v. Ohio (1969) [[Oyez](#) | [Case](#)] + Stone Notes on Brandenburg

- *Fishbowl 2*

### WEEK 6

Mon Feb 18: Chaplinsky v. New Hampshire (1942) [[Oyez](#) | [Case](#)] + Terminiello v. Chicago (1949) [[Oyez](#) | [Case](#)] + Stone Note on Fighting Words

Wed Feb 20: National Socialist Party of America v. Village of Skokie (1977) [[Oyez](#) | [Case](#)] + Lee Bollinger, "The Skokie Legacy" [17p]

- *Fishbowl 3*

Fri Feb 22: New York Times v. US (1971) [[Oyez](#) | [Case](#)]

### WEEK 7

Mon Feb 25: United States v. O'Brien (1968) [[Oyez](#) | [Case](#)] + Texas v. Johnson (1989) [[Oyez](#) | [Case](#)] + Stone Note Draft Card Burning

Wed Feb 27: R.A.V. v. City of St. Paul (1992) [[Oyez](#) | [Case](#)] + Linda Greenhouse, "An Intense Attack by Justice Thomas on Cross-Burning" [[link](#)] + Virginia v. Black (2003) [[Oyez](#) | [Case](#)] + Snyder v. Phelps (2011) [[Oyez](#) | [Opinion](#)]

Fri Mar 1: Jeremy Waldron, *The Harm in Hate Speech*, Chs. 1, 3

### WEEK 8

Mon Mar 4: New York Times v. Sullivan (1964) [[Oyez](#) | [Case](#)] + Stone Note on Central Meaning

Wed Mar 6: Gertz v. Welch (1974) [[Oyez](#) | [Case](#)] + Stone Note on Public and Private Figures

Fri Mar 8: Eugene Volokh, "Court strikes down Ohio ban on knowingly or recklessly false statements about candidates" [[link](#)]

- *Small Groups 3*

## Unit 3 - Free Speech Beyond Speech

### WEEK 9

Mon Mar 11: Buckley v. Valeo (1976) [[Oyez](#) | [Case](#)] + Citizens United v. FEC (2010) [[Oyez](#) | [Case](#)]

Wed Mar 13: Richard Hasen, *Plutocrats United*, Ch. 1, 4-5 [59p]

Fri Mar 15: Remy Dupleiss, “Of Course Money is Speech” [[link](#)] + John O. McGinnis, “Liberals Versus Political Speech” [9p]

- *Fishbowl 4 (debate)*

#### WEEK 10

Mon Mar 18: Laura Weinrib, “Rethinking the Myth of the Modern First Amendment” [20p] + Laura Weinrib, *The Taming of Free Speech* [selections]

Wed Mar 20: Laura Weinrib, *The Taming of Free Speech* [selections, continued] + *Abood v. Detroit Board of Education* (1977) [[Oyez](#) | [Case](#)] + *Janus v. AFSCME* (2018) [[Oyez](#) | [Case](#)]

\* LAURA WEINRIB TALK || Hale 270 || 5:30pm \*

Fri Mar 22: Laura Weinrib, “The ACLU’s free speech stance should be about social justice, not ‘timeless’ principles” [[link](#)]

- *Small Groups 4*

SPRING BREAK || Mon 25 March — Fri 29 March 29 || SPRING BREAK

### **Unit 4 - Digital Landscapes**

#### WEEK 11

Mon Apr 1: Knight First Amendment Institute v. Trump [skim/skip §I–D, pp24–36; reading pp1–24, 36–75, 50p double spaced]

Wed Apr 3: Tarleton Gillespie, *Custodians of the Internet*, Ch. 1–2 [44p]

- *Small Groups 5*

Fri Apr 5: Tarleton Gillespie, *Custodians of the Internet*, Ch. 3 [30p]

#### WEEK 12

Mon Apr 8: “The Twitter Rules” [[link](#)] & “The Twitter Rules: A Living Document” [[link](#)] + Facebook, “Community Standards” [[link](#)] + Instagram “Community Guidelines” [[link](#)] + Reddit Content Policy, Moderator Guidelines, Transparency Report [[link](#)]

- *Small Groups 6*

Wed Apr 10: Tarleton Gillespie, *Custodians of the Internet*, Chs. 4, 7 [44p]

- *Fishbowl 5*

Fri Apr 12: Robyn Caplan, Lauren Hanson, and Joan Donovan, “Dead Reckoning: Navigating Content Moderation After ‘Fake News’” [40p]

#### WEEK 13

Mon Apr 15: Zeynep Tufekci, “It’s the (Democracy-Poisoning) Golden Age of Free Speech” [[link](#)] + Zeynep Tufekci, *Twitter and Teargas*, Chapter 2 [20p]

Wed Apr 17: Renee Diresta, “Free Speech Is Not the Same As Free Reach” [[link](#)]

- *Small Groups 7*

Fri Apr 19: No Class (Instructor at Conference)

#### WEEK 14

Mon Apr 22: Ethan Zuckerman, “Cute Cats to the Rescue? Participatory Media and Political Expression” [24p]

Wed Apr 24: Gary King, Jennifer Pan and Margaret E. Roberts, “How Censorship in China Allows Government Criticism but Silences Collective Expression” [18p]

Fri Apr 26: Ethan Zuckerman, “We Make the Media – a recent speech at Freedom of Speech Online 2018” [[link](#)]

- *Fishbowl 6*

#### WEEK 15

Mon Apr 29: Matthew Prince, “Why We Terminated Daily Stormer” [[link](#)] + Will Oremus, “GoDaddy Joins the Resistance” [[link](#)]

Wed May 1: Tim Wu, “Is the First Amendment Obsolete?”

## **Policies**

Class Conduct: In this course we try to model many of the free speech values that we investigate: e.g., respect for opposing viewpoints (including an anticipatory respect for the audience of your speech), and a willingness to respond to ideas with both intellectual subtlety and moral sensitivity. However, ultimately our project is academic and intellectual, not political. Some forms of contestation and polemic that have value in world of rough-and-tumble politics will inhibit, rather than aid, our inquiries.

Attendance: Every class is mandatory. Each student can take advantage of one no-questions-asked absence across the semester. (Note: This absence can *not* be used when you have work scheduled for or due in a class, including small group days.) Additional absences for uncontrollable circumstances must be cleared with me at least 24 hours in advance. The grade penalty for each unexcused absence is 2% of your overall grade.

Late work: Most work cannot be accepted late. Large assignments (Long Reading Reflections, Fishbowl Reflections) will have one full grade deducted per day late. (The first day late begins immediately after the due date passes; the second day late begins 24 hours after the due date passes; etc.)

Technology: Appropriate uses of technology include: taking notes and referring to electronic versions of class readings. Inappropriate uses include: any kind of texting/messaging, sending/reading email, browsing the web for non-class purposes, shopping, and/or using social media. Misuse of technology for reasons not directly related to course activities can lead to the rethinking of the technology policy.

## **Syllabus Statements**

Classroom Behavior: Students and faculty each have responsibility for maintaining an appropriate learning environment. Those who fail to adhere to such behavioral standards may be subject to discipline. Professional courtesy and sensitivity are especially important with respect to individuals and topics dealing with race, color,

national origin, sex, pregnancy, age, disability, creed, religion, sexual orientation, gender identity, gender expression, veteran status, political affiliation or political philosophy. Class rosters are provided to the instructor with the student's legal name. I will gladly honor your request to address you by an alternate name or gender pronoun. Please advise me of this preference early in the semester so that I may make appropriate changes to my records. For more information, see the policies on classroom behavior and the Student Code of Conduct.

Honor Code: All students enrolled in a University of Colorado Boulder course are responsible for knowing and adhering to the Honor Code. Violations of the policy may include: plagiarism, cheating, fabrication, lying, bribery, threat, unauthorized access to academic materials, clicker fraud, submitting the same or similar work in more than one course without permission from all course instructors involved, and aiding academic dishonesty. All incidents of academic misconduct will be reported to the Honor Code ([honor@colorado.edu](mailto:honor@colorado.edu)); 303-492-5550). Students who are found responsible for violating the academic integrity policy will be subject to nonacademic sanctions from the Honor Code as well as academic sanctions from the faculty member. Additional information regarding the Honor Code academic integrity policy can be found at the Honor Code Office website.

Sexual Misconduct, Discrimination, Harassment and/or Related Retaliation: The University of Colorado Boulder (CU Boulder) is committed to fostering a positive and welcoming learning, working, and living environment. CU Boulder will not tolerate acts of sexual misconduct (including sexual assault, exploitation, harassment, dating or domestic violence, and stalking), discrimination, and harassment by members of our community. Individuals who believe they have been subject to misconduct or retaliatory actions for reporting a concern should contact the Office of Institutional Equity and Compliance (OIEC) at 303-492-2127 or [cureport@colorado.edu](mailto:cureport@colorado.edu). Information about the OIEC, university policies, anonymous reporting, and the campus resources can be found on the OIEC website.

Please know that faculty and instructors have a responsibility to inform OIEC when made aware of incidents of sexual misconduct, discrimination, harassment and/or related retaliation, to ensure that individuals impacted receive information about options for reporting and support resources.

Religious Holidays: It is the responsibility of every instructor to explain clearly her or his procedures about absences due to religious observances in the course syllabus so that all students are fully informed, in writing, near the beginning of each semester's classes. Campus policy regarding religious observances states that faculty must make reasonable accommodations for students and in so doing, be careful not to inhibit or penalize those students who are exercising their rights to religious observance. Faculty should be aware that a given religious holiday may be observed with very different levels of attentiveness by different members of the same religious group and may require careful consideration to the particulars of each individual case.

Religious Observances: Campus policy regarding religious observances requires that faculty make every effort to deal reasonably and fairly with all students who, because of religious obligations, have conflicts with scheduled exams, assignments or required attendance. In this class, non-holiday religious observances can be accommodated with sufficient notice. Please speak to the instructor at the beginning of the semester about anticipated observances, or otherwise *at least one week* before any conflict with class.

## Grading Scale

**A+:** 100% (n/a)

**A:** >93%

**A-:** 90%–92+%

**B+:** 88%–89+%

**B:** 83%–87+%

**B-:** 80%–82+%

**C+:** 78%–79+%

**C:** 73%–77+%

**C-:** 70%–72+%

**D+:** 68%–69+%

**D:** 63%–67+%

**D-:** 60%–62+%

**F:** <60%